

ARGUMENTS/REMARKS

Claims 1 through 40 are pending in the present application. Claims 1, 2 and 25 are amended by the present amendment. Claims 6 and 7 were previously canceled by a prior amendment.

Applicants sincerely appreciate the indication of allowable subject matter with respect to claim 35.

In the Advisory Action mailed on January 11, 2006, the comments indicated that claim 1 should be amended to describe the elements as a first fastener portion and a second fastener portion. Regarding claim 25, the Advisory Action suggested that the first and second portions be claimed as "fastener" portions and that the insert be claimed as a cushion insert.

An Interview with the Examiner in the referenced matter on February 8, 2006, reiterated the suggestions in the Advisory Action.

Applicants have made the requested amendments to the claims for purposes of clarification.

Applicants have included the arguments from the Final Office Action response for purposes of completeness.

In the Final Office Action mailed on October 18, 2005, claims 1 through 6, 14 through 16, 18, 25 through 29, 34, 36, 39 and 40 were rejected under 35 U.S.C. 102(b) as being

anticipated by US Patent 2,861,276 to Alfandre. Applicants respectfully disagree.

The Alfandre patent is directed to a garment closure having an elastic material 54, a backing layer 62 and securing strip 42 for fasteners, and a cushion layer securely connected between two folded over portions and a binding. The binding is of sufficient strength to securely weld the elastic material and the cushion layer into the closure.

Claim 1 is directed to a cushioned fastener system for an article of apparel having a first fastener portion; and a second fastener portion adapted to interconnect with the first fastener portion to secure the article of apparel to a wearer, wherein one of the first fastener portion and the second portion is a cushion structure having at least one insert, the cushion structure having a first layer and a second layer, the first layer being more stretchable than the second layer, the insert being disposed between the first body contacting layer and the second layer.

The Alfandre patent does not have a cushion structure having a first layer and a second layer, the first layer being more stretchable than the second layer, as claimed. In contrast, the Alfandre patent has an elastic material 54 located between the outer backing layer 62 and the outer securing layers 42 and 32. There is no recitation in the Alfandre patent of an elastic material except for the centrally located material 54 that provides elasticity for the body encircling garment. (col. 2, lines 63 through 67).

Further, the Office Action states that the insert is adhesively connected to the pouch as broadly claimed in that the insert 64 is sealed within the pouch (Page 4). Applicants respectfully disagree with this interpretation.

In contrast, the Alfandre patent discloses an element 64 that is cushion layer that securely within the fastener element by binding 58. The element 64 is not an insert because it is securely disposed between the backing 62, the binding 58 and the layers of the fastening element. The insert of the present invention can either be enclosed by free edges or removed from the pouch. Withdrawal and reconsideration of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claims 2, 3, 4 depend from independent claim 1 and are also allowable for the reasons set forth above with respect to claim 1.

Dependent claim 5 depends from independent claim 1 and provides that the cushion structure is a pouch. The Alfandre patent only discloses a cushion layer 64 that is enclosed between a backing layer and the elastic element 62. The Alfandre element does not disclose any pouch. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Dependent claim 14 depends from dependent claim 1 and provides that the first layer has a first free end and the second layer has a second free end.

As discussed above, the layers of the fastening element are all enclosed within a binding element 58. (column 3, lines 12 through 15). The fastening element does not have any free-ends.

Dependent claim 15 depends from dependent claim 14 and provides that the first free-end and the second free-end are mutually connectable. As discussed above, the layers of the fastening element are all enclosed within a binding element 58. (column 3, lines 12 through 15). The fastening element does not have any free-ends.

Dependent claim 16 depends from dependent claim 14 and is also not anticipated by the Alfandre patent for the reasons set forth above.

Dependent claim 18 depends from claim 5 and provides that the insert is adhesively connected to said pouch.

As discussed above, the Alfandre patent neither discloses any insert that or any pouch. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Independent claim 25 is directed to a cushioned fastener system having a first fastener portion; a second fastener portion adapted to interconnect with the fastener first portion to secure the article of apparel to a wearer; wherein one of the first portion and the second portion is a pouch, adapted to contact a body, containing a cushion insert capable of reducing pressure against the body and

enhancing conformability to the body, the insert being disposed inside of the pouch.

The Alfandre patent does not contain an insert that is capable of reducing pressure against the body and enhancing the conformability to the body. Arguably, the element 64 reduces pressure against the body. However, the structure of element 64 does not enhance conformability. Element 64 is a cushion, it therefore only compresses when pressure is applied to it. The material of cushion 64 does not flow and move away from location of pressure to conform to the body, as claimed.

The Alfandre patent does not have any pouch that contains any insert. In contrast, as discussed above, the Alfandre patent discloses a fastening element having several layers that are all enclosed by a binder 58 that securely contains the layers. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Claim 26 depends from independent claim 25 and provides that the pouch comprises a first layer having a first free-end and a second layer having a second free-end.

As discussed above, the layers of the fastening element are all enclosed within a binding element 58 and do not form any pouch. (column 3, lines 12 through 15). The fastening element does not have any free-ends.

Claim 27 depends from claim 26 and provides that the free-ends are mutually connectable.

As discussed above, the layers of the fastening element are all enclosed within a binding element 58 and are fixedly connected to one another.

Claim 28 depends from dependent claim 26, and provides that the free-ends are releasably connected.

As discussed above, the binding element 58 securely encloses all layers of the fastening element so that there are not free-ends. Reconsideration and withdrawal of the 102(b) rejection are respectfully requested.

Dependent claim 36 depends from claim 25 and provides that the insert is adhesively connected to the pouch.

The Alfandre patent does not disclose any insert that is connected to any pouch. In contrast, the Alfandre patent only discloses a series of layers that are connected at their edges by a binding element 58 that is molded by heat. These layers are not connected to any pouch.

Dependent claims 39 and 40 depend from independent claim 25 and are also allowable for the reasons set forth above with respect to claim 25.

In the Office Action, claims 19 through 22 and 30 through 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent in view of U.S. Patent Serial No. 6,231,423 to Deal et al. (hereinafter "the Deal et al. patent").

The Alfandre patent is directed to a garment closure having an elastic material and a cushion layer securely connected between two folded over portions and a binding. The binding is of sufficient strength to securely weld the elastic material and the cushion layer into the closure.

The Deal et al. patent is a push-up brassiere having an envelope between the front panel and the rear panel of the brassiere cups that receives a flexible pouch.

Dependent claim 19 is directed to an insert having a film that encases a cushioning substance.

The Office Action states that "Alfandre discloses the invention substantially as claimed." The Office Action further states that, "Deal discloses silicone padding within film layers (43,44) to encase the loose gel material and with a border that is heat sealed (46)". (Page 3).

Applicants do not agree with this assertion. The Alfandre patent does not disclose the invention substantially as claimed for the reasons set forth above and the Deal et al. patent does not address the deficiencies. Further, there is no motivation to combine the references. The Alfandre is directed to a garment closure. The garment closure has a series of layers including an elastic layer portion and a cushioning layer that are securely welded together at their outer edges with a border. Indeed, the Alfandre patent addresses the border numerous times (Column 1, lines 23 through 26, column 3, lines 12 through 16, column 3, lines 48 through 52, and Claim 1, lines 12 through 15.) The purpose of the Deal et

al. patent is to have a brassiere with pockets that accept large silicone gel inserts at different locations. These inserts were not for the purpose of cushioning. There is no motivation for this combination and it is not one which a person of ordinary skill in the art would set forth.

The Office Action also argues that, "one of ordinary skill in the art would [sic] known to substitute known cushioning materials for one another such as using the material a seen in Deal". (page 7) Applicants respectfully disagree. The gel of the Deal patent would not be properly contained in the fabric materials of the Alfandre patent because the gel would be immediately absorbed by the fabric. One of ordinary skill in the art would not make such a combination.

Dependent claims 20, 21 and 22 depend from claim 19 and are also not anticipated for the reasons set forth above.

Dependent claim 30 depends from independent claim 25 and provides for an insert having a film that encases a cushioning substance.

As discussed above, there is no motivation disclosed or suggested by the Alfandre patent for an insert. Accordingly, with the reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

Dependent claims 31, 32 and 33 depend from claim 30 and provides that the film further has a border therearound.

In the Office Action, claims 7 through 13 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent. Applicants respectfully disagree.

Dependent claim 7 has been canceled by the present amendment. The rejection of claim 7 is rendered moot.

The Office Action states that "Alfandre discloses the invention substantially as claimed." (page 5) Applicants do not agree with this statement. As discussed above with respect to independent claim 1, from which dependent claims 8 through 13 depend, the Alfandre patent does not disclose a cushion structure having at least one insert or that the cushion structure has a first layer and a second layer, the first layer being more stretchable than the second layer, as claimed.

Further, with regard to all of the claimed limitations of claims 8 through 13, the Office Action states that "it would d [sic] have been obvious to one having ordinary skill in the are at the time the invention was made to construction [sic] the brassiere components of the selected materials in order to achieve the desired effect in addition to gaining the benefits and performance characteristics of the selected materials as desired. " (page 5). Again, the Applicants do not agree. First, the arguments do not address the insert element that the Alfandre patent lacks. Second, the Office Action does not indicate which, if any claimed elements of claims 8 through 13 are taught by the Alfandre patent.

Dependent claim 8 depends from dependent claim 6 and provides that the first layer be selected from the group consisting of mono-filament material, multi-filament material, and any combinations thereof.

Dependent claim 9 depends from dependent claim 8 and provides that the first layer have polyester, microfiber, cotton, nylon, spandex, power mesh, and any combinations thereof.

Dependent claim 10 depends from independent claim 1 and provides that the second layer be selected from the group consisting of mono-filament material, multi-filament material and any combinations thereof.

Dependent claim 11 depends from dependent claim 10, and provides that the second layer has polyester, microfiber, cotton nylon, spandex, power mesh and any combinations thereof.

Dependent claim 12 depends from independent claim 1 and provides that the first layer be microfiber spandex.

Dependent claim 13 depends from independent claim 1 and provides that the second layer be microfiber spandex.

The claimed subject matter of claims 8 through 13 imparts desired functionality to the first layer and is not an obvious design choice.

Recondisderation and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

In the Office Action, claims 23 and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent in view of U.S. Patent Serial No. 5,395,280 to Greenberg (hereinafter "the Greenberg patent").

The Greenberg patent is directed to a surgical brassiere having a front pocket and a side pocket for receiving a prosthesis.

Dependent claim 23 depends from dependent claim 5 and provides that the at least one insert is connect to the pouch.

The Alfandre patent discloses a fastener element having a binder 58 to securely and fixedly enclose layers of the fastener element. The Greenburg patent is directed to a brassiere specifically designed with pockets to receive prosthetic devices. There is no motivation to modify a bound fastener element with a pocket that receives inserts absent improper hindsight obtained from Applicants' disclosure. Further, there is no rationale for removing the inserts of the prosthetic device of Greenburg at el. because it would not longer be funcitonal. Reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

Dependent claim 27 depends from dependent claim 26 and provides that the free-ends are mutually connectable.

As discussed above, the Alfandre patent has a fastening element that has layers that are completely bound by element 58. The Alfandre patent does not have free-ends

that are mutually connectable. In contrast, the free-ends are fixedly connected. Again, there is no motivation for this combination absent improper hindsight obtained from Applicants' disclosure.

In the Office Action, claims 24 and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Alfandre patent.

Claim 24 depends from independent claim 1 and provides that the cushion structure has two inserts.

Dependent claim 38 depends from claim 25 and provides that the cushion structure has two inserts.

As discussed above, the Alfandre patent does not have any insert. In contrast, the Alfandre patent discloses an element 64 that is cushion layer that securely within the fastener element by binding 58. The element 64 is not an insert because it is securely disposed between the backing 62, the binding 58 and the layers of the fastening element. Withdrawal and reconsideration of the 35 U.S.C. 103(a) rejection are respectfully requested.

In the Office Action, claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Serial No. 5,157,789 to Klass (hereinafter "the Klass patent").

The Klass patent is directed to a protective hip garment having a protective bubble liner to mitigate falls and prevent bed sores.

Dependent claim 17 depends from dependent claim 14 and provides that the first and the second free-ends are releasably connected.

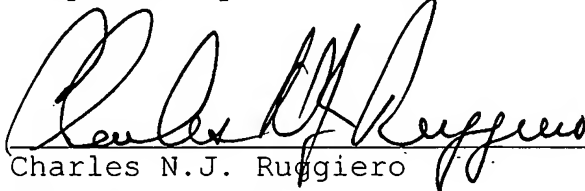
As discussed, the Alfandre patent discloses a fastener element having a binder 58 to securely and fixedly enclose layers of the fastener element. The Klass patent shows a pouch with a releasable fastener. There is no motivation to modify a bound fastener element with a pouch having a releasable fastener absent improper hindsight obtained from Applicants' disclosure. Reconsideration and withdrawal of the 35 U.S.C. 103(a) rejection are respectfully requested.

In view of the foregoing, Applicants respectfully submit that all claims presented in this application patentably distinguish over the cited prior art and the cited combinations of same. Accordingly, Applicants respectfully request favorable consideration and that this application be passed to allowance.

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Date

Respectfully submitted,



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